



**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES HENRY GREEN,

Plaintiff,

vs.

CREG COX, *et al.*,

Defendants.

3:09-cv-0206-ECR-VPC

ORDER

Plaintiff James Henry Green, was directed to file an amended complaint within thirty days, making the amendment due on or before July 29, 2010. On August 4, 2010, the court received plaintiff's motion for extension of time to file an amended complaint "and/or Appeal," citing Nevada Rules of Civil Procedure Rule 6(b) (docket #8) and a motion for appointment of counsel (docket #9).

Initially, the court notes that the proceeding is governed by the Federal Rules of Civil Procedure, not those promulgated by the court of the State of Nevada. Additionally, F.R.C.P. 6(b) allows the court "for good cause" to extend the time within which a party must "act." Plaintiff offers

~~not~~ ^{no} cause, good or otherwise, to allow an extension of the deadline. Moreover, the Federal Rules of Appellate Procedure (F.R.A.P.), Rule 4 governs the time within which a notice of appeal may be filed. That period of time is set at 30 days from the entry of the order or judgment to be appealed and cannot be extended by this court except in certain enumerated circumstances not apparent here. That time has expired and did so before the plaintiff's motion was on file with the court.

Nonetheless, the court will grant plaintiff an extension of time to file his amended complaint revising Count One of the complaint, as previously instructed by the court's order of June 29, 2010. Plaintiff has not been given leave to amend the complaint in any other respect. Plaintiff shall be given to and including August 30, 2010 within which to file his amended complaint.

1 A court may appoint counsel under 42 U.S.C. § 1915(e) only under exceptional
2 circumstances. "A finding of exceptional circumstances requires an evaluation of both 'the
3 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
4 light of the complexity of the legal issues involved..' Neither of these factors is dispositive and both
5 must be viewed together before reaching a decision." *Wilborn v. Escalderon*, 789 F.2d 1328, 1331
6 (9th Cir. 1986)(citations omitted). The motion for appointment of counsel shall be denied at this time,
7 as plaintiff has not demonstrated the exceptional circumstances required for such an appointment.

8 **IT IS THEREFORE ORDERED** that the clerk shall **detach and file** the original
9 complaint (docket #1-1), which complaint is the subject of the court's July 29, 2010 order.

10 **IT IS FURTHER ORDERED** that the motion for extension of time (docket #8) is
11 **granted**. The amended complaint shall be filed on or before August 30, 2010. No additional
12 extensions of time shall be granted for this purpose. Failure to file a timely amendment will result in
13 dismissal of the action.

14 **IT IS FURTHER ORDERED** that the motion for appointment of counsel (docket
15 #9) is **denied without prejudice**.

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17 DATED this 9 day of August, 2010.

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UNITED STATES DISTRICT JUDGE
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